CF0000061035

XV-189 / (Jail)
C. J. P. R. 11/94/2,000

GA 2007/X

(2)

APPEAL OF PRISONER Division Bench (Criminal)

No. 4400/53 Name फिरंगी राम s/o सिरंगी राम

Father's name जिला, मालिक नाम- हेलाडीह, थाना- कोरबा, तह- कोरबा

Residence जिला- बिलासपुर (M.P.) Age 38 वर्ष

Sentenced to आजीवन कारावास On 26/8/96

Under section 302, I.P.C. by द्वितीय अपर सत्र न्यायाधीश- कोरबा, जि. बिलासपुर (M.P.)

It is explained to the prisoner that if he states or wishes to be represented by legal practitioner the Appellate Court will not proceed with the base for seven days unless the legal practitioner appears. If the legal practitioner does not appear within seven days he may not heard at all If the prisoner states that he does not wish to be represented by legal practitioner the court may proceed at once with the case and will not be obliged to give a hearing to any legal practitioner who should appear.

1 Date of Application for copy of Judgement .....

2 Date on which copy received .....

3 Date on which Appeal sent ..... 1/10/96 .....

4 Whether the prisoner wishes to be represented or not - Yes / No

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No. 4400/53 Name फिरंगी राम s/o सिरंगी राम जा. जिला

Confined in बी-क्लास Jail सेन्ट्रल (M.P.)

No. 828 /Apl/96 Dated 23/10/1996

Forwarded to the ~~CHIEF JUDICIAL MAGISTRATE~~ श्रीमति पंडाधिकृत महोदय मण्डला (M.P.) 3 2 4

togather which a copy of judgement or order passed in the case for favour of transmission to the proper Appellate Court.

संलग्नक- S.T. No. 316/95 की-
प्रमाणित निर्णय एवं कैदी

Superintendent
Central Jail, Jabalpur. (M.P.)
23/10/96
Jail

Date of receipt in ..... office Dated as under 26/X/96 to 23/X/96

Date of receipt record to accompany the Memo of Appeal to the Appellate court Aug - 5, Sept - 30, Oct - 23

No ..... Dated ..... 199 5 & within

Forwarded to the ..... JABALPUR

Date of receipt in Appellate Court ..... Reg. No. 625

(P. T. O.)

(18)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr.A. 2007/96 सन् ~~200~~

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Division Bench:
Hon'ble Mr. Justice L.C. Bhadoo &
Hon'ble Mr. Justice Dhirendra Mishra, JJ

21.2.2007

Mr. R.K. Jain, Advocate for the appellant.
Mr. Sudhir Bajpai, Dy. G.A. for the State/respondent.

Oral judgment dictated on *Dais.*

Per L.C. Bhadoo, J.

Since the accused/appellant was not able to furnish the bail bonds, he could not be released from jail and is still in custody since 1995, therefore, with the consent of counsel for the respective parties, the appeal itself is finally heard.

This appeal is directed against the judgment of conviction and order of sentence dated 26.8.1996 passed by the Additional Sessions Judge, Korba Sessions Trial No.316/95 whereby the Additional Sessions Judge after holding accused/appellant Rikhiram @ Likhiram guilty for commission of offence under Section 302 of the IPC, sentenced him to undergo rigorous imprisonment for life.

Case of the prosecution in brief is that on 11.10.1995 at about 5.00 p.m. when the complainant Vittal was sleeping in his house, accused came in a drunken condition, started beating him with fists. When he raised cries, his wife came and rescued him. Thereafter, the accused went to his house, started beating his wife Injorebai with fists & slaps and after

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ...Cr.A.D...2007/176 सन् ~~200~~

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश - 2 -	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

dragging threw her on the ground, as a result of which Injorebai sustained injuries and succumbed to the same. On 12.10.1995 at about 3.00 p.m. the matter was reported in the Police Station-Korba, based on that, the First Information Report (Ex.P/4) was registered for commission of offence under Section 302 of the I.P.C. The Investigating Officer left for the place of occurrence and after giving notice (Ex.P/6) to the Panchas, prepared inquest (Ex.P/1) of the dead body of Injorebai. Dead body of Injorebai was sent for postmortem examination under Ex.P/7 to 100 Bedded Hospital, Rampur, Korba, where Dr. R.K. Divya (PW-7) conducted postmortem and prepared postmortem report (Ex.P/8). Injuries of Vittal were also examined by the doctor and he prepared injury report (Ex.P/2).

After completion of investigation, charge sheet was filed against the accused/appellant in the Court of Judicial Magistrate First Class, Korba, who in turn committed the case to the Court of Sessions Judge, Bilaspur from where learned Additional Sessions Judge, Korba received the case on transfer for trial.

The prosecution in order to establish the charge against the accused/appellant examined seven witnesses. Statement of the accused/appellant was recorded under Section 313 of the Cr.P.C. in which he denied the material appearing against him in the prosecution evidence and stated that he is innocent, as for the last three year his wife was suffering from epilepsy and on the fateful day on account of fit of epilepsy she fell down on the ground and sustained injuries.

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr.A.No.2007/96 **सन्** ~~200~~

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Learned Additional Sessions Judge after hearing learned counsel for the respective parties, convicted and sentenced the accused as aforementioned.

We have heard learned counsel for the parties and perused the material available on record.

Mr. Jain, learned counsel appearing for the accused/appellant argued that deceased Injorebai was the patient of epilepsy, on the fateful day because of epileptic attack she fell down on the ground, sustained injures and there is no evidence on record to connect the accused with the crime in question.

On the other hand, Mr. Sudhir Bajpai, learned Dy. G.A. for the State/respondent supported the impugned judgment of the trial Court.

PW-6 Antram, who is eyewitness of the incident, has stated that on the fateful day i.e. on 11.10.1995, he went to the house of one Shobharam to have the spanner of cycle where the accused Rikhiram was assaulting his wife. He heard that Rikhiram was saying "he will murder", on which his wife was saying, "don't beat, don't beat". Thereafter, the wife of Rikhiram died on the same day. In the cross-examination of this witness the defence has not been able to elicit any circumstance to discredit the evidence of this witness. Even PW-1 Shobharam has also stated that on the fateful day he was at his residence. Antram came to his house to borrow the spanner of cycle, at that time he heard the sound of quarrel between Rikhiram and his wife. The accused was beating his wife and at

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -4-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

that time she was suffering from fever. On the next day morning he came to know that wife of Rikhiram has died. These two witnesses are the independent eyewitnesses as they have no grudge or animosity against the accused. Moreover, the evidence of these witnesses further stands corroborated by the medical evidence of Dr. R.K. Divya (PW-7) who has stated that on 13.10.1995 at about 10.00 a.m. he conducted postmortem on the body of deceased Injorebai and found injuries on the temporal region, contusion on the right hand, abrasion on the right hand and abrasion on the hip. He has further stated that on dissection he found that there was a compressed fracture on the right side of temporal region and cause of death was coma and shock as a result of head injures. In view of the above, it is established that the accused was the author of crime in question.

Learned counsel for the accused/appellant argued that the prosecution has not been able to establish the fact that the accused had any intention to cause death of his wife Injorebai and there is no evidence that the accused used any deadly weapon to assault his wife, as such the offence against the accused does not travel beyond Section 304-II of the I.P.C.

On the other hand, learned counsel for the State opposing the above submission supported the impugned judgment of the trial Court.

Having heard learned counsel for the parties and perused the material available on record, it is an admitted position that as per the

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मामला क्रमांक Cr.A. 2007/96 **सन्** ~~200~~

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश — 5 -	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

prosecution case the accused/appellant did not use any weapon to assault his wife and he assaulted her only with fists, as a result of which she fell down on the ground and succumbed to the injures sustained by her. Therefore, looking to the manner in which the accused attacked his wife it cannot be held that the accused attacked her with an intention to cause her death. However, from the above fact it can safely be inferred that while assaulting the deceased and throwing her on the ground, the accused had definite knowledge that by such conduct, he may likely to cause death of his wife. Thus, it is established that the offence against the accused/appellant does not travel beyond Section 304-II of the I.P.C.

In the result, the appeal partly succeeds. Conviction and sentence imposed upon the accused/appellant under Section 302 of the IPC are set aside and instead thereof, he is convicted under Section 304-II of the IPC and sentenced to undergo R.I. for ten years. It is stated that the accused/appellant is in detention since 12.10.1995 and as such, he has already completed the sentence imposed upon him. Therefore, the accused/appellant is directed to be set at liberty forthwith if not required in any other case.

Sd/-
L.C. Bhadoo
Judge

Sd/-
Dhirendra Mishra
Judge

Khan/-

P.T.O.